

REMARKS**A. INTRODUCTION**

Claim 1 is pending and rejected.

Upon entry of this Amendment:

- Claims 1 and 63-76 will be pending
- Claim 1 will be amended
- Claims 63-76 will be added
- Claims 1, 75 and 76 will be the only independent claims

B. CLAIM AMENDMENTS

Without conceding the propriety of any asserted basis for rejection, Applicants have amended Claim 1 in order to provide for desirable embodiments in which a customer may be offered an upsell (e.g., supplementary product), the offer may be accepted by the customer, and a financial account may be adjusted (e.g., credited or debited). New independent claims 75 and 76 provide for functionality similar to amended Claim 1. No new matter has been added.

New dependent Claims 63-74 provide for various embodiments and features described in the Specification. No new matter has been added.

C. SECTION 101 REJECTION

Claim 1 stands rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants respectfully traverse the Examiner's Section 101 rejection.

The Office Action makes a finding that "the claimed method steps could simply be performed by mental process alone" and "these claims fall within the scope of human intelligence alone." Applicants respectfully traverse these conclusory assertions and submit that the scope of the claimed subject matter was not considered as a whole.

The Office Action, for example, purports that the step of *transmitting a product identifier for specifying the supplementary product* can only be a mental process. The Office Action does not explain how an affirmative step of transmitting could be performed as only a mental process. No substantial evidence is provided to support this interpretation of the plain claim language.

For at least the reason the claims do not support the asserted interpretation that that the step of *transmitting a product identifier for specifying the supplementary product* can only be performed mentally, Applicants respectfully

submit that the Office Action fails to establish a prima face case that Claim 1 is not patent eligible subject matter under 35 U.S.C. § 101.

Further, Applicants have amended the steps of determining and performing to recite explicitly that the steps are performed by a central controller. No new matter has been added.

D. SECTION 102(B) REJECTION

Claim 1 stands rejected under 35 U.S.C. 102(b) as being anticipated by Humble (U.S. Patent No. 4,825,045). Applicants respectfully traverse the Examiner's Section 102(b) rejection.

Contrary to what is asserted in the Office Action, Humble does not disclose *performing a comparison to establish whether a financial account may be debited an amount based at least in part on the adjustment value* at Column 3, lines 50-60. The cited portion is directed generally to summarizing the Humble method "for the checkout of products bearing sensible codes indicative and for the promotion of related products." The cited portion of Humble, however, does not disclose (explicitly, implicitly or inherently):

- a financial account,
- whether a financial account may be debited by an amount, or
- performing a comparison to establish whether a financial account may be debited an amount.

The Office Action does not articulate any explanation as to how the cited portion of Humble discloses the claimed feature of Claim 1.

Applicants further submit that Humble does not otherwise disclose the previously claimed feature of *performing a comparison to establish whether a financial account may be debited an amount based at least in part on the adjustment value, or performing a comparison to establish whether a financial account may be adjusted an amount based at least in part on the adjustment value*, as provided in Claim 1 as amended.

Contrary to what is asserted in the Office Action, Humble does not disclose *if the selection signal indicates that the supplementary product is accepted, adjusting a balance of the financial account in dependence on the adjustment value* at Column 1, lines 10-30. The cited portion of Humble does not disclose (explicitly, implicitly or inherently):

- a financial account,
- adjusting a balance of the financial account, or

- adjusting a balance if a selection signal a supplementary product is accepted.

The Office Action does not articulate any explanation as to how the cited portion of Humble discloses the claimed feature of Claim 1.

Applicants further submit that Humble does not otherwise disclose the claimed feature of *if the selection signal indicates that the supplementary product is accepted, adjusting a balance of the financial account in dependence on the adjustment value or only adjusting a balance of the financial account in dependence on the adjustment value*, as now recited in amended Claim 1.

For at least these reasons, Applicants respectfully submit that the Office Action does not establish a prima facie case of anticipation of Claim 1 by Humble. Further, Applicants submit that Humble does not anticipate Claim 1 because it fails to disclose all of the steps of Claim 1, much less as claimed in combination.

E. ADDITIONAL COMMENTS

Our silence with respect to the Examiner's other various assertions not explicitly addressed in this paper, including assertions of what the cited reference teaches or the Examiner's interpretation of claimed subject matter or the Specification, is not to be understood as agreement with the Examiner. As the Examiner has not established an unrebuttable prima facie case for rejecting Claim 1, for at least the reasons stated in this paper, we need not address all of the Examiner's assertions at this time. Also, the absence of arguments for patentability other than those presented in this paper should not be construed as either a disclaimer of such arguments or as an indication that such arguments are not believed to be meritorious.

F. NEWLY-ADDED CLAIMS 63-76 ARE PATENTABLE OVER THE CITED REFERENCES

Newly-added Claims 63-76 are patentable over Humble for at least the reasons presented herein.

All of the new dependent Claims 63-74 depend from Claim 1 and are submitted as being allowable for a least the reasons stated above with respect to Claim 1. Claims 75 and 76 are independent and are submitted as being allowable for a least the reasons stated above with respect to Claim 1.

For at least the reasons stated herein, we respectfully submit that new Claims 1 and 63-76 contain allowable subject matter.

G. PETITION FOR EXTENSION OF TIME TO RESPOND & AUTHORIZATION TO CHARGE APPROPRIATE FEES

Applicants understand that a two-month extension of time to respond to the Office Action is necessary.

Please grant a petition for any extension of time required to make this Response timely. Please also charge any other appropriate fees set forth in 37 C.F.R. §§ 1.16 – 1.18 for this paper and for any accompanying papers to:

Charge: \$490.00
Deposit Account: 50-0271
Order No.: 97-007-C1

Please credit any overpayment to the same account.

H. CONCLUSION

It is submitted that all of the claims are in condition for allowance. The Examiner's consideration is respectfully requested.

If the Examiner has any questions regarding this paper or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 438-6408 or via electronic mail at mdowns@finchamdowns.com.

Respectfully submitted,

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Date

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